

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2260 of 1994

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For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

Nos.1 & 2 : Yes

Nos.3 to 5 : No

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MAHMAD AYUBKHAN ANWARKHAN      NAGORI

Versus

STATE OF GUJARAT  
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Appearance:

MR KS ACHARYA for Petitioner

MR DA BAMBHANIA for Respondents Nos.1 and 2.

None present for Respondent No. 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/11/97

ORAL JUDGEMENT :

The facts of the case are that the petitioner was taken by the respondents as Driver cum Peon. His services came to be terminated on 3.12.1993. Learned counsel for the petitioner states that appointment was given to the petitioner for two months only though it was continued for 9 months. He states that the termination

of the petitioner thereafter was challenged before this Court by filing Special Civil Application No.13788 of 1993. That petition was allowed on 18.1.1994 and the petitioner was directed to be reinstated in service with back wages. On 10.2.1994, the petitioner was reinstated and on the same day his services came to be terminated. Hence this Special Civil Application before this Court.

2. Learned counsel for the petitioner contended that termination of services of the petitioner on the same date on which he was reinstated in compliance of this Court's order, is mala fide, arbitrary and unjustified. It is next contended that the petitioner is working and his services are being utilised as and when necessity arises. Lastly, it is contended that one jeep is there with the respondents, as such the services of the petitioner are required and therefore, necessary directions may be given to the respondents.

3. Shri D.A. Bambhania, learned counsel for respondents nos.1 and 2 contended that the post of Driver cum Peon was ordered to be kept in abeyance due to 10 % cut in staff strength. Shri Bambhania further stated that the post of Driver cum Peon has been ordered to be kept in abeyance. However, on being asked by the Court Shri Bambhania very fairly admitted that the jeep has not been surrendered to the Government by the respondents. It is further admitted by the counsel for the respondents that no permanent incumbent is there on the post of Driver cum Peon.

4. So far as the decision of the respondents to keep the post in abeyance on economic grounds or due to cut in staff strength, this Court has very limited power of judicial review and jurisdiction in the matter. When the respondents consider that for economic reasons the post is to be abolished or kept in abeyance, such decision of the respondents cannot be said to be arbitrary. Learned counsel for the petitioner also states that on the post of Driver cum Peon no other person has been employed. In view of this admitted facts of the case so far as the action of the respondents to keep the post of Driver cum Peon in abeyance cannot be said to be illegal or arbitrary.

5. But at the same time without driver how far it is justified for the respondents to continue the vehicle/ jeep with them when the post of Driver is kept in abeyance. The consequent effect of keeping of the post in abeyance would have been non user of the vehicle by the respondents. It appears that in termination of services of the petitioner this Court in earlier

proceedings has found fault of the non compliance of section 25F of the Act. That fault has been rectified by the respondents and after giving notice to the petitioner his services were terminated. Otherwise, the termination of the services of the petitioner who was given temporary appointment cannot be said to be arbitrary. Though on merits the petitioner has no case when the post of Driver cum Peon is ordered to be kept in abeyance, I do not find any justification in the action of the respondents to continue the jeep without driver.

6. Respondent no.1 is, therefore, directed to see that the jeep is called back by it from other respondents. Respondents nos.2 and 3 are restrained from using the jeep without driver and they are also directed to surrender the same to respondent no.1. The Special Civil Application is dismissed. Rule is discharged subject to the aforesaid direction, with a further direction to respondent no.1 to produce compliance report of this direction before this Court.

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